BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992	)))))))	MB Docket No. 05-311

REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC. ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

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May 7, 2007

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Charter Communications, Inc. ("Charter") respectfully submits the following Reply Comments on the Further Notice of Proposed Rulemaking ("Further Notice") released in the Commission's March 5, 2007 Report And Order And Further Notice of Proposed Rulemaking ("Report and Order").

I. INTRODUCTION AND SUMMARY

In this proceeding, the Commission seeks to promote competition for the benefit of all cable consumers. Charter and numerous other parties demonstrated in their initial comments that the Commission's goal can be achieved fully only if limits on local franchising authority ("LFA") requirements are applied equally and immediately to all providers.

The record now before the Commission demonstrates that the Commission's findings regarding franchise fees, I-Nets, PEG support, and "mixed use" network regulation must and do apply immediately to all cable operators. While the Commission may have relied exclusively on Section 621(a)(1) when fashioning the "shot clock" rules for new franchises, and while it may have opened the proceeding generally under the auspices of Section 621(a)(1), the Commission's findings and guidance on these other issues were based on interpretations of Sections 611 and 622. They were not limited to interpretation of or Commission jurisdiction under Section 621(a)(1).

LFA arguments that the Commission's findings should not apply to existing cable operators, ever, because those operators agreed to any current requirements, thus waiving the Cable Act, are meritless. It is well established that an individual cable operator cannot waive the Cable Act's limitations on LFA demands, such as the franchise fee cap, because those limitations were adopted by Congress to protect the public interest. Nor is the issue whether existing cable operators have recovered past regulatory costs through their rates. The issue is that the cost of ongoing, future municipal subsidy requirements must be relieved or existing cable operators' rates will be artificially increased, impeding their ability to compete and invest in new, competitive services and technologies.

Existing cable operators, like Charter, are not static, built out, cost recovered, and unresponsive, as the LFAs would paint them. Charter has and will continue to respond vigorously to best serve its customers in a highly competitive environment. But its ability to do so may be undermined, to the ultimate detriment of consumers, if the FCC puts a thumb on the scale to give a regulatory cost advantage to its competitors. In particular, there is no basis in law or policy for the subscribers of one operator to bare the cost of legacy municipal subsidies, like I-Nets, and thus the Commission's rulings must apply equally and immediately to all cable operators. Accordingly, the Commission should confirm that its findings and interpretations regarding franchise fees, I-Nets, PEG, and regulation of mixed use networks apply immediately and equally to all cable operators.

II. THE COMMISSION'S INTERPRETATION OF THE CABLE ACT REGARDING FRANCHISE FEES, I-NETS, AND MIXED USE NETWORKS APPLIES TO ALL CABLE OPERATORS, IMMEDIATELY

The comments submitted to the Commission in response to the Further Notice generally split into two groups: those supporting immediate application of the Commission's findings regarding franchise fees, I-Nets, PEG, and mixed-use networks to all cable operators, and those, primarily of LFAs, asserting that the Commission's finding should not apply to existing cable operators at all, or at least not until after their current franchises expire. The primary arguments advanced by LFAs and others in support of their position that the Commission's findings should not apply at all, or at least not until renewal, are (1) that the Commission's findings were based solely on Section 621(a)(1) of the Cable Act; (2) that Cable operators have waived the Cable Act and are bound to their franchise agreements; and (3) that the pro-competitive policies underlying the Commission's findings do not apply to existing cable operators. There is no merit to those assertions.

A. The Commission's Analyses Were Not Limited To Section 621(a)(1)

The LFAs' primary argument against the application of the Commission's findings in the Report and Order is that the Commission's action was taken pursuant to Section 621(a)(1), which addresses the granting of additional franchises, and therefore is inapplicable, they argue, to existing cable operators.[1] They are wrong because the Commission's substantive interpretations of the limits on franchise fees, I-Nets, PEG, and regulation of mixed-use networks are not confined to newly issued franchises. The Commission may have adopted a shot clock under Section 621, but it also addressed the substantive terms of franchise fees, I-Nets, and PEG support based on Sections 622 and 611 of the Cable Act – not Section 621(a)(1).[2] Indeed, the Commission's discussion was based on long-standing precedent interpreting those sections.[3]

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[1] *See, e.g.*, Comments of National Association of Telecommunications Officers And Advisors, *et al*. ("NATOA Comments") at 5 (the Order "rests on Section 621(a)(1)"); Comments of Fairfax County, Virginia at 6 ("The Commission's authority to implement Section 621(a)(1) ends with the award of a franchise"); Comments of Burnsville/Egan Telecom Commission *et al.* at 3.

[2] *See*, *e.g.*, Initial Comments of Charter Communications, Inc. on the Further Notice of Proposed Rulemaking ("Charter Comments") at 3-5, 8-10; Comments of Verizon at 11 ("[M]any of these findings and rules were based in large part on provisions of the Cable Act that, on the face, apply equally to all providers," citing Section 622 (franchise fees) in particular and noting that the conclusions regarding PEG and I-Net requirements and local regulation of mixed-use networks "all recognized the limitations imposed on LFAs by provisions of the Cable Act other than Section 621(a)(1)"); Comments of WideOpenWest at 6 ("[M]uch of the franchising *Order* confirms existing law and consequently applies to all cable operators and franchising authorities, citing the franchise fee findings in particular.); Comments of the Fiber-to-the-Home Council at 4 (identifying the Commission's "findings" on franchise fees, PEG/I-Nets, and mixed-use facilities and concluding that "[t]hese legal findings by the Commission interpret provisions of the statute applicable to all cable operators without qualification").

[3] Report & Order at ¶ 103 (citing *Robin Cable Systems v. City of Sierra Vista*, 842 F. Supp. 380 (D. Ariz. 1993); *Time Warner Entertainment Co. v. Briggs*, 1993 WL 23710 (D. Mass. Jan. 14, 1993); *Birmingham Cable Comm. v. City of Birmingham*, 1989 WL 253850 (N.D. Ala. 1989)).

The LFAs present no basis for any contrary conclusion. Indeed, while they are unhappy with the possible ramifications, many of the LFAs ultimately recognize and address the fact that the Commission's findings on those issues were not limited to Section 621(a)(1).[4] The Commission cannot and did not divorce its analysis of franchise fee demands and PEG and I-Net obligations from the specific sections of the Cable Act that govern those very issues. Sections 622 and 611 apply equally to all cable operators, and always have. The Commission cannot change that in this proceeding.[5]

B. Cable Act Limits On LFA Requirements Cannot Be Waived

As Charter's and numerous other commenters' opening comments demonstrated, as a matter of law, the Commission cannot impose on incumbent cable operators a different interpretation of Sections 611 and 622 of the Cable Act. Both the plain language of the statute and the policies underlying it require that franchise fee, PEG, and I-Net requirements be treated the same for all cable operators in order to protect cable consumers. Nonetheless, some LFA commenters assert that to the extent a cable operator has entered into a franchise that requires the operator to provide payments, support, or in-kind compensation in excess of Cable Act limits,

[4] *See, e.g.*, Comments of Fairfax County, Virginia at 6 (asserting that Commission has "reinterpret[ed]" Section 622(a)); Comments of The League Of Minnesota Cities, *et al.* ("Minnesota LOC Comments") at 9 (asserting Commission "attempts to rewrite a portion of Section 542 by setting forth certain limitations on the franchise fee authorized by Congress under the Cable Act"); NATOA Comments at 10-11 (addressing the Commission's jurisdiction under Sections 622 and 611, and discussing "[t]he FNPRM's reliance on Section 622").

[5] NATOA asserts that the Commission lacks jurisdiction to interpret Section 611. NATOA Comments at 10. While Charter does not concede that the Commission has jurisdiction under Section 621(a)(1), if the Commission does have jurisdiction to interpret Section 621(a)(1), which is one of three sections specifically identified for judicial review in Section 635(a), it must have at least as much jurisdiction to interpret Section 611, which is not reserved by Section 635(a) solely to the jurisdiction of the courts.

the operator has effectively waived the Cable Act's protections.[6] Similarly, Verizon states that "of course" existing cable operators should be bound to their current franchises until renewal,[7] -- a claim made without any authority or support in a fairly blatant attempt to saddle its competitors with one-sided regulatory burdens.

There is no merit to the LFAs' or Verizon's position. As various courts and the Commission have found, the public policy goals of the Cable Act cannot be waived.

For example, the court in *Cable TV Fund 14-A, Ltd. V. City of Naperville*, No. 96-C-5962, 1997 U.S. Dist. LEXIS 11511 at *86 (N.D. Ill. 1997), addressed an LFA's claim that the cable operator had waived the Cable Act's franchise fee cap, and explained the applicable standards of the Supreme Court:

> While contractual waivers of statutory rights are generally enforceable, a waiver of a statutory right conferred on a private party, but affecting the public interest may not be waived or released if such a waiver would contravene the statutory policy Congress sought to effectuate through the enactment of the statute. *Barrentine v. Arkansas Best Freight Sys., Inc.*, 450 U.S. 728, 740 (1981); *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704 (1945); *See also Jennings Water, Inc. v. City of North Vernon*, 895 F.2d 311, (7th Cir. 1989). In ascertaining whether a statutory right is so imbued with the public interest that it may not be waived, the court must look to the intent of Congress as disclosed by the relevant statute. *Brooklyn Savings*, 324 U.S. at 705.

Naperville, 1997 U.S. Dist. LEXIS 11511 at *77. The court in *Naperville* ruled that, because Congress enacted a five percent cap on cable franchise fees to "prevent local governments from solving their fiscal problems by assessing large fees and/or taxes against cable operators," "the

[6] *See, e.g.*, NATOA Comments at 16 (franchise requirements "product of negotiations"); Minnesota LOC Comments at 9 (same).

[7] Verizon Comments at 2. AT&T's argument is similar, but not as direct. While AT&T asserts that it has "long promoted" Commission efforts to one-sided regulation, it appears to believe that the Commission should not follow that approach for existing cable operators until after the Commission resolves various proceedings that involve AT&T. AT&T Comments at 3-4. AT&T's blatantly self serving argument is no more persuasive than Verizon's.

five percent cap on franchise fees provided in Section 542(b) of the Cable Act may not be waived." *Id.* at *81, 86.[8] Similarly, in *City of Dubuque v. Group W Cable, Inc.*, 1986 U.S. Dist. LEXIS 24010 (N.D. Ia. June 18, 1986), the court rejected the city's argument that the Cable Act's limitations had been waived, holding

> while the Act confers a statutory right on the defendant, that right directly affects the public and may not be waived or released if such a waiver contravenes the statutory policy. By the very language of the Act it is clear that Congress intended to pre-empt local franchises and create a uniform national policy. To now uphold waivers of that national policy would directly contravene the intent of Congress.

Id. at *6-7 (Internal citations omitted).

Indeed, the Cable Act states generally that "*any* provision of law of any State, political subdivision, or agency thereof, or franchising authority . . . which is inconsistent with this [Act] shall be deemed to be preempted and superseded." 47 U.S.C. § 556(c)(emphasis added). Accordingly, the courts have routinely held that the Cable Act's standards are not waivable by a cable operator.[9] Indeed, the Commission has reached the same conclusion. *Report and Order in*

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[8] The Second Circuit applied this principle in the related context of a city's efforts to require a telecommunications company to waive its rights under federal law as a condition of a franchise:

> Requiring telecommunications providers to agree not to challenge the provisions of the franchise in court is a transparent attempt to circumvent § 253 [of the Communications Act]. The [Act] does not create a collection of default rules that municipalities and service providers can contract around. The provision would have been completely unenforceable had [the company] agreed to it, but it was improper for White Plains to even propose it.

TCG New York, Inc. v. City of White Plains, 305 F.3d 67, 82 (2d Cir. 2002).

[9] *See, e.g., Town of Norwood v. Adams-Russell Co.*, 549 N.E.2d 1115 (Mass. 1990); *City of Burlington v. Mountain Cable Co.*, Dkt. S1190-86CnC (Vt. Super. Ct., Dec. 31, 1986) ("preemption . . . extends to any state common law or contract which might impair the stated national objectives and policy"), *aff'd*, 559 A.2d 153 (Vt. 1988) ("Here, the stated public policy is clear and unequivocal, and the enforcement of the contract provision would undermine and detract from that policy."), *cert. denied*, 492 U.S. 919 (1989); *accord*, *Rate Regulation; First Order on Reconsideration*, 9 FCC Rcd. 1164, ¶ 72 n.105 (rel. August 27, 1993) ("An agreement

MM Docket No. 84-1296, 58 R.R.2d 1, 35 n. 91 (1985) ("Neither a cable operator nor a franchising authority may waive mandatory sections of the Cable Act"). Accordingly, the Cable Act's limit on franchise fees and PEG and I-Net demands cannot be waived.

Some LFAs seek to obfuscate their practices of over-collecting subsidies in violation of federal limits by claiming that whatever violations may be occurring are covered in rates or settlements.[10] Charter clearly is not financed or operated like a regulated utility that covers all expenses and generates a return on investment each year.[11] But more fundamentally, the issue is not whether a municipal subsidy can or has been built into subscriber rates. The issue is competition, consumer benefit, and political accountability.[12] If the Commission has identified areas in which state and local franchise demands exceed federal ceilings, then the cost of ongoing, future municipal subsidy requirements in those areas must be relieved or existing cable operators' rates will be artificially increased, impeding their ability to compete and impeding their customers' ability to receive competitively priced services.

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to regulate rates in a manner inconsistent with Commission rules is, in any event, squarely prohibited by Section 623(a)(3)(A)).

[10] The Burnsville/Eagan Telecommunications Commission, *et al.* argued in their Initial Comments that I-Net and PEG requirements "are not always" part of cable franchise agreement consideration, and that "in some instances" operators have voluntarily agreed to construct I-Nets as part of settlement agreements. Comments of Burnsville/Eagan Telecommunications Commission, *et al.*, at 21; *see also* NATOA Comments at 16 (franchise may reflect settlement of claims). Whether such agreements have or could waive the Cable Act in highly unusual circumstances is a matter for individual litigation. In any event, the Commission cannot fail to apply a general statutory provision to an entire industry based on individual, exceptional circumstances.

[11] *See* CCO Holdings, LLC, Fiscal Year 2006 Form 10-K http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-SECText&TEXT=aHR0cDovL2NjYm4uMTBrd2l6YXJkLmNvbS94bWwvZmlsaW5nLnhtbD9yZXBvPXRlbmsmaXBhZ2U9NDc3NzM5OSZhdHRhY2g9T04=

[12] This is particularly true given that subscriber surveys regularly reveal significant opposition to paying for PEG and I-Nets.

Moreover, the fact that the requirements at issue are in state and local franchises does not immunize them from Commission action. The Commission has a long history of preempting state and local laws that contravene federal policy. For example, after the Commission's Triennial Review Order, Verizon eliminated certain UNEs that New Hampshire tariffs had made available to CLECs because of the Commission's decisions under Section 251 of the Communications Act. The courts enjoined the PUC's attempt to require Verizon to continue to provide the UNEs.[13] Earlier, when the Commission decided to promote competition by deregulating ownership of copper wiring inside a customer's home in the mid-1980's, it voided state tariffs.[14]

The Commission has a long, similar history of preempting local cable franchises.[15] For example, it recently did so in its Cable Modem ruling.[16] Indeed, the Commission has repeatedly preempted LFAs and local franchise requirements, specifically in the franchise fee context, and

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[13] *See, e.g., Verizon New England v. New Hampshire Public Utilities Commission*, Memorandum and Order, Opinion No. 2006 DNH 094, Case No. 05-cv-94-PB (D.N.H. 2006).

[14] *Detariffing the Installation and Maintenance of Inside Wiring*, Memorandum Opinion and Order, 1 FCC Rcd 1190, ¶ 17 (rel. November 21, 1986) ("Absent preemptive detariffing, the uneconomic and inefficient misallocation of inside wiring costs would persist, and customers would be deprived unnecessarily of the full benefits of competition within the inside wiring installation and maintenance markets."), *affd. in part*, *NARUC v. FCC*, 880 F.2d 422 (DC Cir. 1989), *affd. in part sub nom*, Third Report and Order, 7 FCC Rcd. 1334 at ¶ 8 (1992) ("[W]e preempt state regulation that requires or allows telephone companies to bundle charges for simple inside wiring services with charges for tariffed services.").

[15] *See, e.g., Amendment of Part 74, Subpart K of the Commission's Rules and Regulations Relative to Community Antenna Television Systems*, Cable Television Report & Order, 36 FCC 2d 143, ¶¶ 185-86 (rel. February 3, 1972) (imposing preemptive limits on local franchise fees, and stating that "many local authorities appear to have extracted high franchise fees more for revenue-raising than for regulatory purposes.…The ultimate effect of any revenue-raising fee is to levy an indirect and regressive tax on cable subscribers.").

[16] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, ¶32 (rel. March 15, 2002) ("*Cable Modem Order*"), *aff'd., National Cable & Telecommunications Association v. Brand X Internet Services*, 125 S.Ct. 2688 (2005).

in so doing, the Commission's rulings applied immediately to all cable operators.[17] LFA claims that cable operators are bound to their franchises in a way that cannot be undone by the Commission are therefore out of step with Commission precedent.

III. ENHANCING COMPETITION AND CONSUMER WELFARE REQUIRES THAT EXISTING OPERATORS BE TREATED THE SAME AS NEW ENTRANTS

In its initial Comments, Charter demonstrated that immediate, uniform application of the Commission's interpretation of "franchise fees" under Section 622, and I-Net and PEG requirements under Sections 611 and 622, is necessary to promote competition and protect consumers.[18] Many other comments support the same point. For example, Charter's point was echoed by competitors and new entrants, like RCN and the Fiber-To-The-Home Council, as well as interested third parties, like Alcatel-Lucent.[19] Like Charter, those other commenters noted

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[17] *See, e.g., In re United Artists Cable of Baltimore*, 11 FCC Rcd. 18158, 18174 (1996) ("The issue of what constitutes 'gross revenues … derived from the operation of a cable system' arises from a specific provision of the statute and not, as some commenters appear to claim from individual franchise agreements"); *Time Warner Entertainment/Advance-Newhouse Partnership and the City of Orlando, Florida: Petitions for Decl. Ruling on Franchise Fee Issues*, 14 FCC Rcd. 7678, ¶ 4 (1999).

[18] Charter Comments at 3-11.

[19] Comments of RCN Telecom Services, Inc. at 7 ("By applying the rule to all operators in a market, the Commission will promote consumer choice and full and fair competition without governmentally-imposed fees and costs on some operators but not others"); Comments of the Fiber-To-The-Home Council ("FTTH Comments") at 4-6; Comments of WideOpenWest Finance, LLC at 6 (franchise fee holding applies to all cable operators); Comments of Alcatel-Lucent at 1-2, 4 ("the Commission should strive for regulatory parity"). AT&T also made the same point, although it tried to diminish its support of symmetrical cable regulation by complaining about the pace at which its ILEC services are deregulated. As Charter noted in its opening comments, there is a significant difference between the regulation of ILEC services and facilities to protect consumers and competitors and the "regulations" at issue here, such as I-Nets and PEG requirements, which are unrelated to consumer welfare or protecting competitors from abuse.

that the Commission has a history of adopting regulatory policies that will promote consumer benefit through robust competition unencumbered by outdated regulatory burdens.[20]

Nonetheless, the LFAs argued that the Commission's pro-competitive policies do not apply to existing cable operators because they are already in the market and have constructed their networks.[21] The LFAs' arguments are meritless. Accomplishment of the Commission's and the Cable Act's pro-competitive, pro-consumer goals require that existing cable operators not be hampered by unlawful legacy subsidies, like I-Nets.

A. Existing Cable Operators Are Not Static – They Vigorously Invest And Respond To Competition

The LFAs seek to portray cable operators as built-out, established, cost-recovered and able to offer services unaffected by regulatory burdens and competition.[22] This portrait bears no relationship to Charter's history or operations. Charter entered the market largely between 1998 and 2000 by purchasing a footprint of largely rural, un-improved cable systems. In the face of vigorous competition from overbuilders, DBS, and other new entrants, Charter spent the last five years investing billions of dollars in private risk capital to upgrade and rebuild its cable systems. Since 2000, Charter invested approximately $11 billion throughout the country, with the majority of the capital spent on upgrading and rebuilding its infrastructure in the local communities it serves.[23] By the end of 2005, Charter had deployed approximately 34,000 miles of fiber optic

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[20] *See, e.g.,* Comments of Alcatel-Lucent at 4-5.

[21] *See, e.g.,* Comments of NATOA at 14; Comments of Burnsville/Egan Telecom Commission *et al*. at 4; Comments of Abington, Belchertown, Brocton, Brookline, *et al.* at 4.

[22] *See, e.g.,* Comments of Burnsville/Egan Telecom Commission, *et al.* at 4, 18; Comments of NATOA at 14.

[23] *See, e.g.,* Charter Communications, Inc. Form 10-K, filed Apr. 15, 2003 (for period ending Dec. 31, 2002) at 55-56 (reporting of $2.2 billion, $2.9 billion and $2.8 billion in capital expenditures just for the years ending 2002, 2001, and 2000, respectively, with the majority of

lines and approximately 120,000 miles of upgraded coaxial cable. As a result, Charter has been at the forefront of deploying advanced networks and services, and it keeps diversifying its services and improving its networks. In January 2003, Charter became the first cable company to carry HDNet, capitalizing on the early movement to high definition television. In 2004, Charter introduced the first ever digital simulcast cable system in Long Beach, California. Charter continues to expand its offerings of voice and high speed Internet access services. Charter is not a static, unmoving monolith. It is a dynamic, responsive participant in the market, and it intends to continue being one.

As well-funded ILEC competition continues to expand, Charter will continue to respond competitively. In markets where Verizon has entered, Charter, for example, has accelerated its launch of voice service, increased high speed Internet access speeds to 10 Mbps, will shortly be expanding its channel lineup to add significantly more new HD channels and new digital channels, and is working on still higher bit rates for high speed data service. All of these responses are natural consequences in highly competitive markets, and all require substantial resources if subscribers are to see the benefits of competitive responses. Charter must have the regulatory cost flexibility to respond quickly to changes in any given market without being constrained by costly legacy franchise subsidies. It is unrealistic to presume that Charter is a sleepy incumbent with a settled network and services that is unaffected by the burdens of municipal subsidies. The Commission has concluded that incumbent LECs—with wires already deployed—need a deregulated local backdrop to upgrade their networks and diversify their services. The same is true for incumbent cable operators.

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capital expenditures in those years relating to rebuild and upgrades and new set-top boxes and cable modems).

B. Burdening One Provider's Subscribers With The Cost Of Subsidies Will Impede Competition

The LFAs' comments further emphasize a point raised by Charter in its initial comments – namely that requiring existing cable operators to continue subsidizing municipal telecommunications needs under the guise of "I-Nets" violates the Cable Act and will impede competition.

Many LFAs argue for their ability to continue requiring existing cable subscribers to subsidize "I-Nets" that serve to provide the municipalities with free or reduced cost telecommunications services.[24] For example, the Colorado LFAs' Comments admit that franchises "often include provision of *communications services* by the cable operator to the local jurisdiction at a reduced rate."[25] Indeed, the Colorado LFAs' comments explain that the City of Tacoma, Washington has shifted $825,000 per year in telecommunications services costs from taxpayers as a whole onto one cable operator's subscribers by using the I-Net required of Click! Network.[26]

Such I-Net demands have two-fold harm on competition and consumers. First, it is shifting to the incumbent's subscribers the cost of a service that benefits and should be paid for by all the members of the community. Second, the requirement denies the cable operator, the ILEC or any CLEC the ability to compete for the municipality's services, when competition

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[24] *See*, *e.g.*, Comments Submitted by Certain Florida Municipalities at 2; Comments of the Greater Metro Telecommunications Consortium, the City of Colorado Springs, Colorado and the City of Tacoma, Washington in Response to the Further Notice of Proposed Rulemaking ("Colorado LFA Comments") at 6-8; Comments of Burnsville/Egan Telecom Commission, *et al.* at 21-23.

[25] Colorado LFA Comments at 7 (emphasis added).

[26] *Id.*

would reduce prices, enhance functionality, provide political accountability, and enhance consumer welfare.

The LFAs present no compelling reason to continue this subsidy other than the fact that they have grown used to demanding them. But in the words of the Minnesota League of Cities, "this model has changed."[27] The historic market landscape in which LFAs obtained concessions is gone. The "new model" under the Commission's new rules involves rapid market entry by well-financed, established ILECs, who can offer cable service over their newly upgraded fiber optic networks while also competing for data and voice services. Under the new model, ILECs will be able to rapidly roll out service offerings to targeted areas and demographics, and will do so without the burden of PEG, I-Net, and in-kind obligations in excess of the 5% cap.[28] In this new model, any conceivable rationale for maintaining traditional LFA concessions is gone – particularly if they are only imposed on one provider. Municipal data and telecommunications needs should be paid for by all citizens, not just the subscribers to one incumbent cable operator. Moreover, that operator should not be forced to give away for free services that it otherwise is attempting to offer in competition with the incumbent LEC.

Support for PEG should likewise be spread across all citizens, not just the subscribers to the incumbent cable operator.[29] There is no longer any basis for the subscribers of just one cable

[27] Minnesota LOC Comments at 11.

[28] Verizon's recent reports confirm the rapidity of ILEC deployment. It reported on April 30, 2007 that it gained 141,000 new FIOS video customers in the first quarter of 2007, and already has 348,000 FIOS customers, total. *See* http://investor.verizon.com/news/view.aspx?NewsID=831.

[29] *See, e.g.*, S. Rep. No. 98-67, at 25 (1983) ("it is necessary to impose such a franchise fee ceiling because the committee is concerned that, without a check on such fees, local governments may be tempted to solve their fiscal problems by what would amount to a discriminatory tax not levied on cable's competitors."); *see also, e.g.*, 129 Cong. Rec. 15461 (daily ed. June 13, 1983) (statement of Sen. Goldwater) (franchise fee limit "to prevent local governments from taxing private operators to death as a means of raising local revenues for other concerns").

operator to bear the weight of paying for items that benefit the entire community.[30] Continuation of such subsidy requirements will simply impede incumbents' ability to compete and unfairly burden their customers.

IV. CONCLUSION

Based on the foregoing, the Commission should reject its preliminary conclusion that its findings in the Report and Order apply to existing cable operators only upon renewal of their franchises. The Commission's findings, particularly its interpretation of Section 622, regarding franchise fees, and Section 611, regarding I-Nets, must apply immediately to all cable operators to promote robust competition that will benefit consumers.

Respectfully Submitted,

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May 7, 2007

[30] *See, e.g.,* Colorado LFA Comments at 6-7 (cable payments used for projects unrelated to cable, such as code enforcement and parks); NATOA Comments at 15 (applying Commission's holdings would impact general LFA budgets).